

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

No. 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

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THE VIDEOTAPED DEPOSITION OF ED
FITE, produced as a witness on behalf of the
Defendants, in the above styled and numbered cause,
taken on the 6th day of April 2009, in the City of
Tulsa, County of Tulsa, State of Oklahoma, before me,
Marlene Percefull, Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the State
of Oklahoma.

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. David Riggs
Mr. Richard Garren
Attorney at Law
502 West 6th Street
Tulsa, OK 74119

FOR TYSON FOODS:

Mr. Robert George
Attorney at Law
2210 West Oaklawn Drive
Springdale, AR 72762

FOR CARGILL:

Mr. John Tucker
Attorney at Law
100 West 5th Street
Suite 400
Tulsa, OK 74103

FOR SIMMONS FOODS:

Mr. John Elrod
Attorney at Law
221 East Dickson Street
Fayetteville, AR 71701

FOR PETERSON FARMS:

Ms. Nicole Longwell
Attorney at Law
320 S. Boston
Suite 700
Tulsa, OK 74103

FOR GEORGE'S:

Mr. Woodson Bassett
Attorney at Law
221 North College
Fayetteville, AR 72701

ALSO PRESENT:

Opveon, Jason Weitholter

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1 (Whereupon, the deposition began at
2 9:06 a.m.)

3 THE VIDEOGRAPHER: We are now on the record
4 for the deposition of Mr. Ed Fite. Today is April 6,
5 2009. The time is 9:06 a.m. Would counsel identify
6 themselves for the record?

7 MR. RIGGS: David Riggs, State of Oklahoma.

8 MR. GARREN: Richard Garren, State of
9 Oklahoma.

10 MR. TUCKER: John Tucker for the Cargill
11 Defendants.

12 MR. BASSETT: Woody Bassett for the George's
13 defendants.

14 MR. GEORGE: Robert George for the Tyson
15 defendants.

16 MR. ELROD: John Elrod, Simmons Foods.

17 MS. LONGWELL: Nicole Longwell on behalf of
18 Peterson Farms.

19 THE VIDEOGRAPHER: Thank you. The witness
20 may be sworn in.

21 ED FITE,
22 having first been duly sworn to testify to the truth,
23 the whole truth and nothing but the truth, testified as
24 follows:

25 DIRECT EXAMINATION

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1 River Commission. 9:57AM

2 Q And the whole idea of this is to create a riparian
3 zone that more closely resembles what the land was like
4 maybe 150 years ago as opposed to ten years ago?

5 A Yes, sir. 9:57AM

6 Q Now, we started out talking about -- you started
7 out talking about some of the issues you've been
8 involved in over the years, you talked about the City
9 of Tahlequah. Tell me what that was about.

10 A Under the water quality standards of the State of 9:58AM
11 Oklahoma back in the '80s, we had a narrative standard
12 for scenic rivers.

13 Q Meaning just words that describe as opposed to a
14 number to describe?

15 A Mm-hmm. We had a narrative standard within 9:58AM
16 Appendix A, which was once designated as a scenic
17 river, there could be no new sources of pollutants
18 introduced in a point source.

19 Q Right.

20 A And the City of Tahlequah had historically been 9:58AM
21 discharging out of their PATW into the river. And they
22 wanted to double the pollutants going into the river,
23 double the flow, thus double the pollutants that would
24 come out the pipe and into the river, which we said
25 time out, you can't do that. You can continue to 9:58AM

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1 Q Okay. Back to Fayetteville. That was -- had to 10:01AM
2 do with their split flow?

3 A (Nods head.)

4 Q And just --

5 A Fayetteville. 10:01AM

6 Q Quickly. Go ahead.

7 A Fayetteville had historically discharged into the
8 White River and at the point where they discharged into
9 the White River in the summer months is -- has a small
10 yield flow and so the discharge from that waste water 10:01AM
11 treatment facility was actually causing fish kills on
12 occasion. And given the growth in the Fayetteville
13 area and the requirements of that waste water treatment
14 plant they had to build a new plant. And because of
15 the costs involved, they were only able to come up with 10:02AM
16 an option that would allow them to retrofit that
17 current waste water treatment facility located on the
18 banks of the White River. And that particular facility
19 was going to actually split half of its effluent to the
20 Illinois River to the first time. And that's where we 10:02AM
21 got into an issue with them saying again you can't have
22 a new discharge into a scenic river, it's prohibited.
23 And they said, well, we're in Arkansas, you can't stop
24 that. And we said, well, EPA under the triangle review
25 process had reviewed water quality standards for the 10:02AM

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1 A Yes. 10:51AM
2 Q Do you think I've got them all?
3 A Gentry.
4 Q Gentry.
5 A Yes. 10:51AM
6 Q The major dischargers would be Springdale, Rogers,
7 Fayetteville and Siloam, correct?
8 A Yes.
9 Q And is it true that up until fairly recently their
10 discharges exceeded one part per million phosphorous? 10:51AM
11 A In all five cities.
12 Q On all five of them?
13 A With the exception of Fayetteville. Fayetteville
14 built to one part per million.
15 Q For their new west side plant? 10:51AM
16 A Okay.
17 Q That just went into --
18 A Yes, that new plant is less than one.
19 Q Okay. And the others have agreed to go to one
20 part per million max, is that true? 10:51AM
21 A Yes, under the Principles of Agreement 2003.
22 Q And they are in the process of upgrading their
23 facilities as we speak in order to accomplish that, is
24 that true?
25 A I believe they've all accomplished the upgrades 10:52AM

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1 A Failure to follow prescribed application plan. 11:59AM

2 Q That would be abnormal if that occurred, is that
3 what you're saying?

4 A Mm-hmm. I've seen that in the past, I've seen
5 individuals stockpile their waste at the end of a barn 12:00PM
6 or out facility and let all nitrogen molt to rise in
7 the atmosphere and, you know, things like that. I
8 think that there's ways to use poultry waste to
9 accomplish fertilization.

10 Q The example you just gave, Mr. Fite, would be of 12:00PM
11 an abnormal use of poultry litter in your opinion?

12 A Yes.

13 Q Is that the traditional use of poultry litter in
14 this watershed is to stockpile it at the end of a house
15 and to leave it? 12:00PM

16 A No.

17 Q And when there are instances where poultry litter
18 has been stockpiled and left exposed to the elements,
19 are you aware that there are unfortunate mechanisms
20 available through the Department of Ag to correct that? 12:00PM

21 A Yes, we exercised that two summers ago when a new
22 landowner purchased a farm, 250-acre farm, upstream of
23 Hanging Rock on the west side of the river and brought
24 in truck loads and truck loads of poultry waste and
25 stockpiled it without covering it. And we had to file 12:01PM

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